IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
V.)	ID No. 0408012099 WCC
SYLVESTER MILLER,)	
Defendant.)	

Submitted: April 4, 2013 Decided: July 25, 2013

On Defendant's Second Motion for Postconviction Relief – DENIED

ORDER

Kevin Carroll, Esquire, Department of Justice, 820 N. French Street, Wilmington, DE 19801.

Sylvester Miller, James T. Vaughn Correctional Center, 1181 Paddock Road, Smyrna, DE 19977. *Pro Se* Defendant.

CARPENTER, J.

On this 25th day of July 2013, upon consideration of Defendant's *Pro Se*Motion for Postconviction Relief, it appears to the Court that:

- 1. On April 1, 2013, Sylvester Miller ("Miller") filed a *Pro Se* Motion for Postconviction Relief, his second, pursuant to Superior Court Criminal Rule 61 ("Rule 61"). In this Motion, Miller raises the following grounds for relief:

 1) ineffective assistance of counsel at pretrial, trial, sentencing, and on appeal, which violated his constitutional rights under both state and federal law; 2) false and defective, multiplicative indictment counts, which violated his double jeopardy rights under both state and federal law; and 3) the trial court's wrongful admission of statements made by his ex-wife. For the reasons set forth below, Defendant's Second Motion for Postconviction Relief is **DENIED**.
- 2. Following a jury trial, Miller was found guilty on March 28, 2005 of six (6) counts of First Degree Rape and one (1) count of Continuous Sexual Abuse of a Child. On June 17, 2005, Miller was sentenced to a mandatory term of fifteen (15) years imprisonment for each count of Rape, and two (2) years imprisonment, followed by a period of probation supervision for the count of Continuous Sexual Abuse of a Child. Additionally, two (2) days prior to Miller's sentencing, Miller filed a Motion for Appointment of Counsel, requesting the Court to appoint different counsel to pursue his appeal. This Court issued a letter on July 26, 2005,

denying Miller's request for appointed counsel and explaining that any claim for ineffective assistance of counsel could not be addressed on direct appeal of his conviction.

- 3. Miller's conviction and sentence were affirmed on appeal to the Supreme Court in March 2006. Subsequently, Miller filed his first Motion for Postconviction Relief on July 11, 2006.
- 4. On January 31, 2007, Miller again filed a Motion for Appointment of Counsel, which this Court denied due to Miller's failure to set forth good cause in support of his request. On October 29, 2007, Miller's first Motion for Postconviction Relief was denied by this Court. Additionally, on November 6, 2007, this Court denied Miller's Motion to Dismiss the indictment. On March 28, 2008, the Supreme Court affirmed this Court's judgment.
- 5. On April 1, 2013, nearly eight (8) years after his conviction, Miller filed the motion presently before the Court. Prior to addressing the merits of any postconviction claim, the Court must determine whether the procedural requirements of Rule 61 have been met.¹ Specifically, any ground for relief raised by the Defendant that was not raised at trial or on direct appeal is procedurally barred, unless the Defendant shows both cause for relief and prejudice from a

¹ See e.g., Bailey v. State, 588 A.2d 1121, 1127 (Del. 1991); Younger v. State, 580 A.2d 552, 554 (Del. 1990) (citing Harris v. Reed, 489 U.S. 255, 265 (1989)).

violation of his rights.² Additionally, any grounds for relief previously adjudicated, including those adjudicated in "the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding," are barred unless "reconsideration of the claim is warranted in the interest of justice."³

A. Procedurally Barred Claims

6. In his second Motion for Postconviction Relief, Miller asserts similar—if not identical—claims as he did on his first Motion for Postconviction Relief, which included: constitutional violations, juror issues, prosecutorial misconduct, indictment issues, and witness credibility and perjured testimony. The Court again finds that these claims are procedurally barred because they were either not raised on direct appeal or were previously adjudicated on Miller's first Motion for Postconviction Relief. Despite this procedural bar, the Court has again reviewed the claims and finds there is no basis to reconsider them under the interest of justice standard.

² See Super. Ct. Crim. R. 61(i)(3).

³ Super. Ct. Crim. R. 61(i)(4).

B. Ineffective Assistance of Counsel

- 7. The Court now turns to Miller's ineffective assistance of counsel claim. Specifically, Miller claims counsel: 1) failed to fully consult with him about his defense; 2) misled him about the evidence that the State would use against him at trial; 3) denied him the opportunity to have a fair trial; 4) failed to present certain witnesses; 5) failed to object to the State's use of the victim's Florida affidavit; and 6) failed to object to the videotape of his interview with the police. Therefore, Miller reasons that counsel provided ineffective assistance and cites *Martinez v. Ryan*⁴ in support of this rationale. The Court cannot agree.
- 8. Ineffective assistance of counsel claims are governed by the two-part test established in *Strickland v. Washington*⁵. Specifically, a defendant's claim of ineffective assistance of counsel is subject to a strong presumption that the representation was professionally reasonable.⁶ In order to overcome this presumption, the defendant must establish that: 1) his trial counsel's efforts fell below a reasonable objective standard; and 2) there is a reasonable probability that the outcome of the proceedings would have been different but for counsel's unprofessional errors.⁷ However, "mere allegations of ineffectiveness will not

⁴ 566 U.S. at —, 132 S.Ct. (2012).

⁵ 466 U.S. 668, 687 (1984); see also Winn v. State, 1998 WL 15002 (Del. Jan. 7, 1998).

⁶ See Winn, 1998 WL 15002, at *2.

⁷ See Strickland v. Washington, 466 U.S. 668, 689 (1984).

suffice." Instead, "a defendant must make, and substantiate, specific allegations of actual prejudice." Further, courts must evaluate defense counsel's conduct at the time of the trial in order to maintain the proper perspective and "eliminate 'the distorting effects of hindsight."

- 9. Miller's reliance upon *Martinez* is misplaced as it does not change this Court's standard.¹¹ *Martinez* allows a federal *habeas* court to hear substantial claims of ineffective assistance of counsel at trial if, in the initial-review collateral proceeding in the state court, there was no counsel or counsel in that proceeding was ineffective.¹² Although *Martinez* does not apply to state court proceedings, this Court recently amended Rule 61 of its Rules of Criminal Procedure to provide that, effective May 6, 2013 and onward, "[t]he court will appoint counsel for an indigent movant's first postconviction proceeding."¹³
- 10. However, this is Miller's Second Motion for Postconviction relief and despite pending when this Court amended Rule 61, *Martinez* has no effect after one's initial Rule 61 petition. However, even if the amended Rule were applicable, the Court would reach the same result. This Court previously held that

⁸ Gattis v. State, 697 A.2d 1174, 1178.

⁹ Id. at 1178-79.

¹⁰ Id. at 1178 (citing Strickland, 466 U.S. at 689).

¹¹See Martinez v. Ryan, 566 U.S. at —, 132 S.Ct. 1309 (2012).

¹² See id at 1311

¹³ 2013 Del. D.O. 0015; see also State v. Travis, 2013 WL 1196332, at *2 (Del. Super. Mar. 25, 2013).

counsel's decisions regarding the presentation of witnesses or suppression of evidence were tactical decisions that did not fall below an objective standard of reasonableness and, therefore, the Court does not need to address them again here. Second, for claims not previously addressed, Miller neither explains why he failed to raise them on his first Motion for Postconviction Relief nor "advance[s] any colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction." As such, the Court finds Miller's ineffective assistance of counsel claim to again be without merit.

C. Miscellaneous Claims

11. Finally, Miller cites the Vienna Convention to argue that, as a Jamaican national, he was entitled to be informed of his right to speak to the Jamaican consulate upon his arrest. Without addressing whether this right was applicable, the Court notes that even Miller acknowledges that this violation would have had little effect on his trial. Further, it is difficult to imagine that contacting the Jamaican consulate would have changed Miller's position when speaking with the police; Miller likely would have maintained a similar position of denying the allegations the victim made against him.

¹⁴ State v. Jones, 2013 WL 2152198, at *3 (Del. Super. May 20, 2013).

12. This Court previously stated that "[a]ny remaining allegations in [] Miller's motion not specifically addressed by the Court are no more than general statements of legal rules or rambling commentary by [him]."¹⁵ The Court finds that this conclusion is again equally applicable here.

Having found that Miller's claims for relief are without merit, the Defendant's Second Motion for Postconviction Relief is hereby **DENIED.**

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
 Judge William C. Carpenter, Jr.

¹⁵ State v. Miller, 2007 WL 327943, at *4 (Del. Super. Oct. 29, 2007).